

Exhibit 38

00317

1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

2

MBIA INSURANCE CORPORATION :

3 and WELLS FARGO BANK, :

N.A. (f/k/a WELLS FARGO) :

4 BANK MINNESOTA N.A.) as :

TRUSTEE OF SFC GRANTOR :

5 TRUST, SERIES 2000-1, SFC :

GRANTOR TRUST, SERIES :

6 2000-2, SFC GRANTOR TRUST, : C.A. NO.

SERIES 2000-3, SFC GRANTOR : 02-1294-JJF

7 TRUST, SERIES 2000-4, SFC :

GRANTOR TRUST, SERIES 2001-1:

8 SFC GRANTOR TRUST, SERIES :

2001-2, SFC OWNER TRUST :

9 2001-I, AND SFC GRANTOR :

TRUST, SERIES 2001-3, :

10 Plaintiffs/Counterclaim :

Defendants, : TRACK(I)WITNESS:

11 : M. DUNCAN GRANT

v. : VOLUME II

12 ROYAL INDEMNITY COMPANY, :

Defendant/Counterclaim: DATE:

13 Plaintiff. : OCTOBER 11, 2006

14 ROYAL INDEMNITY COMPANY,

Third-Party Plaintiff,

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vs.

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ANDREW N. YAO, STUDENT LOAN

17 SERVICING LLC, STUDENT LOAN

ACCEPTANCE II LLC, STUDENT LOAN

18 ACCEPTANCE III LLC, STUDENT LOAN

ACCEPTANCE III LLC, STUDENT LOAN

19 ACCEPTANCE V LLC, STUDENT LOAN

ACCEPTANCE VIII LLC, STUDENT LOAN

20 ACCEPTANCE IX LLC, SFC FINANCIAL LLC

I, SFC FINANCIAL LLC II, SFC

21 FINANCIAL LLC VI, SFC FINANCIAL LLC

VII,

22 Third-Party Defendants.

23 ROYAL INDEMNITY COMPANY,

Counter-Claimant,

24 vs.

MBIA BANK and WELLS FARGO BANK

MINNESOTA, N.A.,

25 Counter-Defendants.

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1 _____

2 CHARLES A. STANZIALE, JR.,
3 Chapter 7 Trustee of Student Finance
Corporation,
3 Plaintiff,

4 vs. C.A. No. 04-1551-JJF

5 PEPPER HAMILTON LLP, et al,
Defendants.

6 _____

7 CHARLES A. STANZIALE, JR.,
8 Chapter 7 Trustee of Student Finance
Corporation,
8 Plaintiff,

9 vs. C.A. No. 05-72-JJF

10 McGLADREY & PULLEN LLP
and MICHAEL AQUINO,
11 Defendants.

12 ROYAL INDEMNITY COMPANY,
Plaintiff,

13 vs. C.A. No. 05-165-JJF

14 PEPPER HAMILTON LLP,
15 W. RODERICK GAGNE,
FREED MAXICK & BATTAGLIA CPAs,
16 McGLADREY & PULLEN LLP,
and MICHAEL AQUINO,
17 Defendants.

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00471

1 Mr. Smith. And is it fair to say

2 that -- I'm sorry.

3 Would you take out the

4 deposition of Mr. Smith?

5 A. Sure. Do you happen to have an
6 exhibit number?

7 Q. 261-I.

8 A. Okay, I have got it.

9 Q. And if you turn to the last page
10 of Smith 16, the certification by
11 Mr. Smith and Nielsen?

12 A. Okay, I have got to it. Looking
13 at WSFC 826328?

14 Q. Well, I was looking at a
15 different document, but let's get on
16 the same page. Yes, I am.

17 A. Okay, I am all set.

18 Q. Is it fair to say, looking at
19 this now, that this answers the
20 question of what were those payments
21 that Nielsen thought -- from
22 students that Nielsen thought SFC
23 had appropriated to itself and hid
24 from Nielsen?

25 A. Realizing that I never thought

00472

1 about that question until now, I

2 would say it does not answer it.

3 Q. Doesn't this indicate that at

4 least from Nielsen's point of view,

5 in their conversation with Yao, he

6 told them that the payments were

7 payments that were being made by

8 SFC, not the students?

9 A. Which payments? I don't think

10 the payments in Paragraph -- I don't

11 understand now, having not thought

12 about it during the pendency of the

13 Nielsen litigation, that the

14 payments that are the subject of

15 Paragraph 48-D of the Complaint are

16 the same as the payments referred to

17 on the page we are looking at in the

18 exhibit to the Smith deposition. If

19 I'm wrong, please help me, but I

20 don't understand --

21 Q. What do you see as the

22 difference between those payments?

23 A. I understand the allegation in

24 Paragraph 48-D to be the student

25 made payment to Student Finance,

00473

1 Student Finance kept the money and
2 did not give a credit to that
3 student loan account, Nielsen thinks
4 that a credit to the account should
5 have been applied. And there are
6 consequences to that; namely, a
7 portion of the reserve should then
8 be advanced to Nielsen.

9 So that's the situation in
10 which Nielsen says a payment was
11 made, but it was not credited.
12 Having not thought about Page WSFC
13 826328 in this fashion until
14 yesterday and today, I understand it
15 now to be saying payment wasn't made
16 by the student, but for some
17 purpose, the books are being treated
18 as if the payment had been made, so
19 the books reflect a payment. So
20 that's just the opposite of what's
21 in Paragraph 48-D.
22 Q. The payment is being made by SFC
23 as if it were a payment by the
24 student?
25 A. This page of this exhibit to the

00474

1 Smith deposition says that Conrad
2 Smith and Robert Nielsen are
3 reporting that Perry Turnbull
4 reported that Mr. Yao made payments
5 with his own money. It doesn't say
6 with SFC's money.

7 Q. And it also says at the end that

8 Yao said: This explains why Nielsen
9 or NEI is confused.

10 Do you see that part of
11 it?

12 A. I would interpret that to mean
13 that Mr. Turnbull -- that according
14 to Mr. Smith and Mr. Nielsen, Mr.
15 Turnbull said, this explains why NEI
16 is confused.

17 Q. Right.

18 And doesn't that offer a
19 possible explanation as to what is
20 alleged in the last paragraph of the
21 Complaint, 48-D of the Complaint?
22 And that is this, that payments are
23 being made by SFC as if they were
24 being made by the student, and
25 Nielsen is saying, why aren't we

00475

1 getting credit for this if the
2 student is making the payment. And
3 SFC is explaining in this
4 conversation, you are not getting
5 credit, you are confused, because
6 these payments aren't by the
7 student. They are being made by
8 SFC.

9 Doesn't that reconcile or
10 provide a potential reconciliation
11 between these two paragraphs?

12 A. That's not how I understand
13 them.

14 Q. Did you ever consider that
15 possibility?

16 A. No. I never compared those two
17 pages and never thought about the
18 possibility you are asking me, no.

19 Q. Well, you remember you were
20 looking in May of 1999 for the
21 answer to this question in the
22 Complaint? That was something you
23 were interested in then?

24 A. I was interested in
25 understanding my client's position